IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.
NOTICE OF MOTION NO.4043 OF 2007
IN
SUIT NO.2977 OF 2007

Abdul Majid Abbobhai ..Plaintiff.
Vs.
Rashida Fakhruddin Lokhandwala
and others ..Defendants.

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Mr. Chirag Balsara i/b Mr. S.M. Kazi for the Plaintiff.
Mr. S.A. Sabir i/b Nandlal Kothari & Sabir for Defendants 1 to 4.
Mr. Christopher D'Souza i/b Ms. Sarita Dhonde for Defendant No.5.
Mr. Vijay Rande, representative of the Court Receiver present.

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CORAM: **DR. D.Y. CHANDRACHUD, J.**
27th November, 2007.

P.C. :

1. By consent the Notice of Motion is taken up for hearing and final disposal. The Sixth and Seventh Defendants have been served.

2. The Notice of Motion has been taken out in a Suit for redemption instituted by the Plaintiff. Briefly stated, the facts are that a mortgage was created on 9th December, 1967, the mortgagor being the predecessor in interest of the Plaintiff. The mortgagee was the predecessor of Defendant Nos.1 to 4. The mortgage was created in respect of a sum of Rs.15,000/- which

was to be repaid with simple interest of 12% per annum. A further charge in the amount of Rs.10,000/- was created on 9th November, 1970. Both the mortgagor and the mortgagee have expired and the Plaintiff is the successor of the mortgagors. The Fifth Defendant claims to have purchased the interest of the mortgagees (Defendant Nos.1 to 4) under an agreement dated 23rd January, 2007. According to the Fifth Defendant, a Memorandum Of Understanding was entered into on 8th September, 2007 and 16th September, 2007 with the Sixth and Seventh Defendants who together with the Plaintiff have interest in the immovable properties as co-owners.

3. In the year 1977 a Miscellaneous Petition was filed before this Court by the original mortgagee Khatizabai for reliefs under Section 69-A of the Transfer of Property Act, 1882 for the appointment of a Receiver. On 27th January, 1999 a Learned Single Judge of this Court appointed the Court Receiver as Receiver with a direction that the Receiver shall take formal or symbolic possession of the property. From the report of the Court Receiver dated 18th April, 2007 it appears that there are two structures each with 16 rooms situated on the property and there

are 32 tenants. Nearly eight years after the order of this Court, the Receiver filed a report on 18th April, 2007 stating that the order of the Court had remained to be implemented and that in the meantime the municipality had taken steps to put up the property for sale for the recovery of the arrears of taxes. On the report of the Receiver an order was passed by a Learned Single Judge of this Court on 5th July, 2007 directing the Receiver to visit the site for ascertaining the names of the 32 occupants/ tenants. The Plaintiff herein was also directed to furnish the details of the names of the occupants/ tenants within the period stipulated.

4. Counsel appearing for the Plaintiff has tendered a statement reflecting a computation of the dues payable under the deed of mortgage dated 9th December, 1967 with interest at 12% per annum as stipulated therein. According to the statement the total dues together with interest amount to Rs.1,26,500/-. The learned counsel has stated that the Plaintiff is ready and willing to deposit the entire outstanding payable as a condition precedent to the grant of any ad interim relief in the Notice of Motion.

5. The relief that has been sought in the Notice of Motion is

that the Court Receiver who was appointed as Receiver pursuant to the order dated 27th January, 1999 be continued as Receiver in the Suit and the Plaintiff be appointed as his agent to collect the rents and profits in respect of the property. The second relief that has been sought is an order restraining the Sixth and Seventh Defendants from alienating their interest in the property. Similarly, an order of restraint has been sought as against Defendants 1 to 5 from alienating any interest in the property or alienating the property.

6. On behalf of the Fifth Defendant it has been submitted that the Fifth Defendant had by an agreement dated 23rd January, 2007 stepped into the shoes of Defendants 1 to 4 who are the successors in interest of the original mortgagee. Subsequently, on 8th September, 2007 and 16th September, 2007 the Fifth Defendant purports to have entered into a Memorandum of Understanding with Defendants 6 and 7 who claimed interest in the property as co-owners together with the Plaintiff. The Memorandum of Understanding has not been placed on the record. Be that as it may, it would appear that the Memorandum of Understanding was entered into after the appointment of the Receiver on 27th January,

1999. The acquisition of interest by the Fifth Defendant is also after the order of this Court dated 27th January, 1999 by which the Court Receiver was appointed as Receiver. The submission of the Fifth Defendant is that the suit for redemption is barred by limitation under Article 61(a) the Schedule to the Limitation Act, 1963. Under Article 61(a) the suit by a mortgagor for redemption has to be instituted within a period of 30 years and time begins to run when the right to redeem or recover possession accrues. According to the Fifth Defendant, the right to redeem must be considered to have accrued when the mortgagee issued a notice on 31st January, 1976 calling upon the mortgagor to repay the debt, which was followed by a further letter dated 28th August, 1976. At this stage, without expressing any final or conclusive opinion on the issue of limitation it would prima facie appear that the mortgagee has not taken any steps in pursuance of the deed of mortgage for foreclosure of the mortgage. It must be noted that the Miscellaneous Petition under Section 69-A was only for the appointment of a Receiver for the collection of rent and the management of the property.

7. Having regard to the facts and circumstances of the case, I am of the view that the Plaintiff is entitled to the relief that

has been sought in the Notice of Motion subject to condition. The grant of any relief to the Plaintiff should be subject to the condition that the Plaintiff deposits in this Court (i) an amount of Rs.1,26,500/- within a period of four weeks from today and (ii) that the Plaintiff also deposits all the amounts paid towards the municipal and other taxes as ascertained by the Receiver. In order to facilitate ascertainment of the property taxes, the Fifth Defendant is granted permission to furnish a statement to the Court Receiver of the municipal taxes if any that have been paid by the Fifth Defendant. The Receiver shall carry out the process of ascertaining the upto date municipal taxes including those that may have been defrayed by the Fifth Defendant. Immediately on the Receiver doing so, the Plaintiff shall place the Receiver in funds corresponding to the amount of the property taxes due and payable in respect of the property upto date with a view to facilitate the Receiver disbursing the arrears, if any, that remain. Subject to compliance with the aforesaid conditions, the Plaintiff shall stand

appointed as the agent of the Court Receiver to collect the rent/ compensation in respect of the tenanted premises. The Plaintiff

shall, however, not appropriate any part of the rents but shall deposit the same with the Court Receiver together with a quarterly statement of the rents/ compensation realized and collected. The Plaintiff, it is needless to add shall be prohibited from entering into any agreement for the transfer of tenancy and in the event that any transfer is proposed by an existing tenant / occupant, the leave of the Court shall be taken before any such transaction is effected. Since the appointment of the Receiver has been continued by the order passed in the Notice of Motion, it is not necessary to grant any further injunctive reliefs. The Plaintiff will be at liberty to adopt such remedies as are open in law in the event that a need arises.

The Notice of Motion is accordingly disposed of.